

## DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

**D.T.E. 03-45**

In addition to Verizon MA, the following parties filed comments: Richmond Connections, d/b/a Richmond Networx (“Richmond NetWorx”), Richmond Telephone Company (“Richmond Telephone”), AT&T Communications of New England, Inc. (“AT&T”), PAETEC Communications, Inc. (“PAETEC”), Sprint Communications Company L.P. (“Sprint”), and Verizon Wireless. In these Reply Comments, Verizon MA jointly refers to Richmond Telephone and its competitive local exchange carrier (“CLEC”) affiliate - Richmond NetWorx - as “Richmond.”

## **ARGUMENT**

### **A. Contrary to Some Parties' Claims, the Department Would Require Specific Legal Authority to Establish an Instate USF.**

While Section 254 of the Act allows state commissions to establish an intrastate universal service support mechanism, it does not require states to do so. Likewise, the Act does not empower state commissions to act in the absence of state statutory authority enabling them to establish an instate USF.

Contrary to AT&T's claims, the fact that the Department has, in the past, "set rates above cost in order to provide funds to Verizon to be used to subsidize local exchange service" is *no* indication that the Department can establish an instate USF without express legal authority. AT&T Comments, at 8-9. Maintaining - or removing - contribution from rates squarely falls within the scope of the Department's statutory authority to regulate telecommunications services and set rates. *Id.* at 6-7. Likewise, it is within the Department's statutory power to set rates for certain classes of customers to achieve its universal service goals, as it has done with the LifeLine program. *Id.* at 8. However, creating distinct rates for a particular customer class does not constitute a "fund," as AT&T erroneously suggests, which transfers funds among carriers.

Creating a funding mechanism is quite different in that it requires carriers to contribute to a pool from which other carriers will later draw monies based on some demonstrated need. As Verizon MA, Verizon Wireless and Sprint correctly point out, there is *no* legal precedent allowing the Department to collect and redistribute monies in this manner among carriers. Verizon MA Comments, at 4-6; Verizon Wireless Comments, at 2-5, 6; Sprint Comments, at 4. Absent an express grant of legal authority, the Department cannot create an instate "fund" to transfer funds among carriers for the

purpose of universal service. This is consistent with a number of jurisdictions, where specific legislation was enacted authorizing state commissions to establish a USF, where appropriate. Verizon MA Comments, at 4-5.

Accordingly, the Department should deny the relief requested in the Petition. The Department is not authorized to establish an instate USF and, thus, conducting a proceeding on such matters is unwarranted. The Department should decline to open a proceeding on USF until it has the requisite authority to create such a fund. Sprint Comments, at 1, 4.

**B. No Party Has Demonstrated the Need for Establishing an Instate USF to Ensure the Provision of Affordable Telecommunications Services at Reasonably Comparable Rates in Massachusetts.**

Section 254(b) of the Telecommunications Act of 1996 (the “Act”) provides for the establishment of “specific, predictable and sufficient” support mechanisms “to preserve and advance universal service” while promoting the pro-competition goals of the Act. 47 U.S.C. § 254(b)(5). Verizon MA concurs with Sprint and PAETEC that Richmond has simply not made a case that the establishment of an instate USF is necessary and appropriate to ensure affordable, comparably priced telecommunications services in rural areas of Massachusetts. Sprint Comments, at 5; PAETEC Comments, at 4.

In its comments, Richmond Telephone claims that an instate USF is necessary to remove the pressure on local service rates that would result from reductions in intrastate access rates. Richmond Telephone Comments, at 4-5. Richmond Telephone argues that its intrastate access rates should be reduced because of increasing competition from wireless carriers and other telecommunications providers. Richmond Telephone seeks the creation of an instate USF because the contribution in access charges have

traditionally supported rates for local services, which are also subject to the competitive marketplace. Richmond Telephone Comments, at 4.

In effect, Richmond Telephone's request would require other telecommunications companies to fund its rate rebalancing on a revenue neutral basis via an instate USF. This is unreasonable and unnecessary.

The fact that Richmond Telephone's access rates are high and its local service rates are low is the result of a regulatory history that encouraged high contribution levels from services, such as access, in order to maintain low basic service rates. Rather than reducing intrastate access charges by increasing local rates and recovering the costs from the cost-causers, *i.e.*, its retail local exchange service customers, Richmond Telephone demands that the difference be made up through the creation of an instate USF. What Richmond Telephone seeks here is to shift to other carriers the costs of implementing access charge reform and moving toward a more balanced rate structure. Moreover, drawing from the fund would guarantee certain monies to Richmond Telephone, while insulating the company from market-driven competition. This is not the intent of a universal support mechanism under Section 254 of the Act.

Richmond Telephone has failed to provide *any* support for its claims that local rates cannot be increased to offset intrastate access rate reductions. In fact, Richmond Telephone's current local service rates are well below Verizon MA's rates for comparable services in Western Massachusetts, and it can rebalance its local service rates

without impacting the availability or affordability of its services.<sup>2</sup> Thus, it has failed to show any need for a USF fund.

An in-state USF should *not* be established without a more detailed financial analysis by those carriers seeking to shift the cost burden to other carriers through a fund.<sup>3</sup> It is clear that Richmond Telephone can readily rebalance its rates while still maintaining universal service goals. This is a more equitable approach than imposing the costs of access reductions onto other carriers and their end users, as Richmond Telephone Company and AT&T suggest. AT&T Comments, at 12-13; Richmond Telephone Comments, at 4-5.

In addition, the establishment and administration of an in-state USF has considerable costs. It is not simply an issue of setting a rate component, as AT&T suggests. AT&T Comments, at 2. Rather, establishing and administering a USF is a complicated and complex process.

The implementation and administration costs associated with a USF must be balanced against the need for such a fund. Absent a financial or cost analysis by proponents showing that a USF is necessary to preserve universal service, it would be unfair and anti-competitive to require other telecommunications providers to contribute to

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<sup>2</sup> For example, Richmond Telephone's tariffed rate for unlimited residence telephone service is approximately 50 percent of Verizon MA's current rate in that service area. Richmond Telephone Company, M.D.P.U. Tariff No. 6, pp. 7-8.

<sup>3</sup> In its comments, PAETEC suggests that the Petition is more about "establish[ing] a renewed source of revenue through subsidy ... to bolster its own weakening balance sheet rather than some ideological desire to enhance the public interest in the Commonwealth." PAETEC Comments, at 3-4. PAETEC states that "[c]ompetition is providing the exact remedy the Petitioner claims is lacking through lower prices, technological improvements and a diverse set of carrier choices for Massachusetts telecommunications consumer even in the rural areas of the western part of the Commonwealth." *Id.*

such a fund.<sup>4</sup> A USF is not intended to assist companies, like Richmond Telephone, in making other carriers subsidize and insulate them from inefficient local service rates or market competition, but rather is to be used strictly to support universal service.<sup>5</sup>

## **CONCLUSION**

The Department does not have adequate authority under existing federal or state law to establish an instate USF. Until such time as the Department is expressly granted such authority, the Department should not initiate any investigation into such matters.

Even if there were adequate authority for a USF, parties have not demonstrated sufficient need to establish an instate USF in Massachusetts. The purpose of a USF is to ensure that consumers in high cost areas of a state, typically rural areas, have access to comparable telecommunications services at affordable, reasonably comparable rates as customers in urban areas of the state. *See e.g.*, 47 U.S.C. § 254(b)(3). Richmond Telephone Company has failed to show that its local service rates cannot absorb switched access rate reductions, thereby jeopardizing the provision of universal service. Moreover, contrary to claims made in the Petition, Verizon MA's current wholesale/retail rate

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<sup>4</sup> To the extent that a USF is created, Section 254 of the Act requires that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." 47 U.S.C. § 254(b)(5). Wireless carriers, such as Verizon Wireless, should not, however, be expected to contribute to an instate USF because the Department is preempted from regulating the rates, entry, terms and conditions of wireless carriers operating in Massachusetts. Verizon MA Comments, at 4 n.2.

<sup>5</sup> Providing a subsidy to Richmond Telephone would be particularly anomalous because Richmond Company competes with Verizon MA through its CLEC affiliate, Richmond Networx, in Verizon MA's own service area. Moreover, as explained in Verizon MA's Initial Comments, Richmond Networx has not sufficiently demonstrated that there is a price squeeze or arbitrage created by Verizon MA's deaveraged wholesale prices and averaged retail rates. Verizon MA Comments, at 6-8. For example, Richmond Networx has the ability to resell Verizon MA's retail services, thereby providing a readily available means of ensuring affordable service, or may choose other alternatives for market entry, such as UNE-P, a combination of facility-based UNE entry or pure facilities-based entry. Verizon MA's Comments, at 8.

structure does not impede the goal of universal service in any way. Accordingly, there is no basis for considering an instate USF.

Respectfully submitted,

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Its Attorney,

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